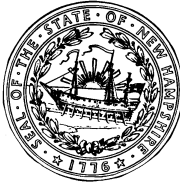


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TO: USDA Child Adult Care Food Program  
Sponsors of Homes and Centers

FROM: Elaine VanDyke, Administrator  
Bureau of Nutrition Programs and Services

RE: Geographical sponsorships

DATE: 11/04/2009

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This memo reiterates previous written memos, web memos and meeting notes addressing geographical territories and home provider transfers. This memo also addresses the federal regulations regarding establishment of geographical territories among sponsoring agencies.

During the 2000 revision of the Child Adult Care Food Program (CACFP) federal regulations, it was noted that transfers from one family home sponsor to another sponsor was an issue requiring federal guidance. As such, USDA provided regulation and guidance to State Agencies regarding the ability of home providers to transfer from one sponsor to another.

In 2005, USDA further strengthened many CACFP regulations by specifically defining the rules regarding any use of geographical territories when establishing sponsorship of the family home provider network. Through the process of determining revisions, meeting with regional administrators, and reviewing evaluations, USDA was made aware that many states allowed sponsors to establish geographical territories in which they operated family home provider programs.

On January 31, 2005, the NH State Agency provided extensive training to state family home sponsors regarding home provider transfer policies and other pertinent regulatory requirements. Also on this date, the State Agency initiated a beginning meeting with the state sponsoring organizations regarding geographical territories. This meeting was attended by Rockingham Community Action, Merrimack Valley Day Care, Organization Day Care Providers, Interlakes Child Care Center, Tamworth/Bearcamp and a USDA regional Boston representative, Roseanne Luvisi.

The timing of the January meeting was to ensure participants understood the content and focus of a significant number of anticipated changes to federal program regulations. The intent was also to allow sponsors enough time to make changes in practice before the regulatory deadlines.

On April 13, 2006, USDA provided to State Agencies, memo # CACFP 11-2006- *Prohibition on State Agencies' Establishing Geographic Territories for Sponsoring Organizations in the Child and Adult Care Food Program*.

As expected, USDA prohibited the practice of establishing geographical territories. This regulation was identified in memo CACFP 11-2006, which has been posted on our bureau home webpage since 2006.

On May 23, 2006, CACFP annual state conference under Healthy Attitudes for Active Living Up-Dates, New Information section- notification of regulatory disallowance of any geographical territories by state agencies or sponsors of CACFP.

During the September 19, 2006, CACFP sponsor meeting agenda included discussion of sponsor policies and procedures for the recruitment of new facilities and the transfer of facilities between sponsors. (Geographical territory issues) During this meeting, several state policies were provided to each attendee. The policies provided, directly addressed the geographical territorial issue. The policy titled: *Recruitment for Sponsors of Family Day Care Home Providers and Centers*- Section 3, states: NH may have no state requirement that limits the ability of the NH CACFP sponsors to recruit homes beyond any predetermined geographical boundary.

### **Legal Federal Citation**

Legal federal Citations for these regulations were identified in training and in subsequent memos as: 7 CFR Part 226. 25, Public Law 224, Section 243 (f) of the Agricultural Risk Protection Act, USDA CACFP 11-2006 memo.

### **Purpose of the denial**

The purpose of federal clarification and the regulatory changes were made by USDA because they had identified some State agencies as having assigned or allowed specific and exclusive territories to sponsoring organizations of day care homes in their State. In those cases, a State agency would deny an application submitted by a sponsoring organization for a day care home located outside of its assigned territory, solely on that basis. While Program regulations preserve the right of State agencies to impose "additional requirements...". This practice is not inconsistent with the regulations. Program regulations also stipulate that such additional requirements may not deny the Program to an eligible institution.

Limiting an eligible day care home sponsor to a specific geographic area has the effect of denying Program participation. In fact, the establishment of exclusive geographic territories may have the unintended effect of causing a sponsoring organization to decrease its responsiveness and service to day care home providers since the granting of an exclusive territory, combined with the statutory limits on provider transfers, diminishes a dissatisfied provider's ability to transfer to another sponsor. Also, sponsors who have exclusive geographical territories may not exhibit, by practice, a quick turnaround to approving application for new providers because they know they have exclusive rights to bringing on the home.

When geographical territories exist, sponsors can, as this example shows, deny providers participation and leave them with no opportunity to participate in the program. EX. A sponsor determines that they will not sponsor an eligible provider because the provider only offers to children a morning snack and an afternoon snack. It was determined by the sponsor that this provider would be too much work for little return on investment. Thus an eligible provider, because no one else could pick them up, will go without participation. In NH we have had this happen. The action of geographical territory denials sets a discriminatory environment of participation.

### **Current Practice**

USDA requires that no State agency sets up a geographical system for sponsors. USDA also requires that State agencies ensure that sponsoring organizations, as a group, have not created exclusive geographic territories themselves.

The NH State agency has reason to believe that sponsors continue the practice of honoring geographical territories.

### **Actions:**

We believe we have made the above statement as clear as possible both in this memo and previously. Sponsors are not required to expand their capacity for supporting additional home providers beyond their marketing plan, but may not organize an exclusive geographical system themselves. There is no gentlemen's agreement to territorial rights.

Any sponsor who has identified in their marketing plan that they have the capacity to take on any provider in any given area, may do so as long as the sponsor application marketing plan has been approved by the State agency.

The removal of geographical territories increases the need of sponsors to carefully assess their marketing plan, be assured they are actively pursuing providers based on the plan.

We anticipate this memo will come with questions. Please feel free to contact our office.

Elaine VanDyke, Administrator  
Bureau of Nutrition Programs and Services  
Division of Program Support  
NH Department of Education

### **End Note:**

According to Food Research and Action Center, *Child and Adult Participation Trends Report 2009*, NH ranks 45th in the nation for having centers participating and ranks 47<sup>th</sup> in sponsoring homes. In 2007 we had 4 more homes on our program than in 2008. In 1996 NH had 11 sponsors of homes, in 2008 there are 7 sponsoring organizations. This information may be viewed at: [http://www.frac.org/pdf/cacfp\\_09\\_participationtrends.pdf](http://www.frac.org/pdf/cacfp_09_participationtrends.pdf)

